



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Riss International - Rates for San Antonio, Texas,  
are Applicable to Kelly Air Force Base  
**File:** B-222927  
**Date:** July 21, 1987

### DIGEST

A carrier contends that higher tariff rates are applicable to a shipment picked up at Kelly Air Force Base in lieu of a Freight All Kinds mileage-rate tender applied from San Antonio, Texas, to various points, since Kelly is a separate entity from the City of San Antonio. The General Services Administration collected overcharges by deduction on the basis that the tender rates apply to Kelly Air Force Base, which, although a separate entity, is adjacent to and surrounded by San Antonio. GSA's action is sustained since evidence indicates an understanding by the parties that tender rates would apply where the Government Bill of Lading referred to the tender, to the estimated tender charges, to the mileage between origin and destination, and the carrier's agent received the shipment with notice of the annotations without objection, and originally billed the government on the basis of the tender rates.

### DECISION

This decision responds to a request made by Riss International (Riss), a motor common carrier of property, that we review a deduction action taken by the General Services Administration (GSA) against the carrier's bills. See 31 U.S.C. § 3726 (1982). For reasons that follow, we conclude that Riss has not established that GSA's deduction action was improper.

### BACKGROUND

The record shows that on March 16, 1982, the transportation officer of Kelly Air Force Base (AFB), Texas, tendered a truckload shipment of Freight All Kinds (FAK) to Riss for transportation to Groton, Connecticut. The carrier's agent

signed Government Bill of Lading (GBL) S-3592497 acknowledging receipt of the shipment.<sup>1/</sup>

The GBL contained several notations that are relevant to the issue involved here of whether the FAK mileage rates published in Riss Tender No. 65-A are applicable from Kelly AFB, as contended by GSA, or higher tariff rates apply, as urged by Riss. In the "TARIFF OR SPECIAL RATE AUTHORITIES" block of the GBL is the notation "RISS GT 65 A;" in the "FROM (Shipping Point)" block is "San Antonio, Texas 78241;" in the "FULL NAME OF SHIPPER" block is "T.O. Kelly Air Force Base;" in the "DESCRIPTION OF ARTICLES" block appears the notation "\$1793," which approximates the freight charges based on Tender 65-A rates, and the notation "(1900 MILES)," the mileage from origin to destination.

Riss originally billed and was paid \$1,793.60, based on the Tender 65-A rates. GSA reports, however, that about one year later Riss presented an undercharge claim for \$511.65 and the Army Finance Center paid the supplemental bill. In its post-payment audit, GSA determined that the carrier's receipt of the additional \$511.65 constituted the collection of overcharges in that amount, and when Riss declined to voluntarily refund, GSA recovered the amount by deduction from other bills presented for payment by the company.

#### OPINION

The issue of Tender 65-A's applicability was precipitated by three apparently undisputed facts. Although the City of San Antonio and Kelly AFB adjoin each other, they are separate geographic and political entities. The FAK mileage rates published in the tender were named to apply specifically from San Antonio (to various destinations, including Groton, Connecticut), while the shipment actually originated at Kelly AFB, even though the GBL shows the shipping point as San Antonio.

Riss contends that in view of evidence clearly showing that San Antonio and Kelly AFB are separate entities it would be improper to consider evidence extrinsic to the tender in determining whether it was intended for application from Kelly AFB. Riss presented maps showing that Kelly AFB is not

---

<sup>1/</sup> Although the carrier's request for review referred to an attached list of bills, none was received and GSA's report addressed only GBL S-3592497, although the agency notes that its research located 14 other similar GBLs.

within the incorporated boundaries of San Antonio, and points out that the base has its own post office and zip code number.<sup>2/</sup> In addition, Riss argues that there is no tariff rule making the rates in Tender 65-A (which are specifically applicable from San Antonio) applicable also from Kelly AFB, as there is in some other tariff publications.<sup>3/</sup> The carrier further argues that it handles many shipments under Tender 65-A rates from San Antonio and publishes other rates that specifically apply from Kelly AFB.

The GSA presents two arguments in support of its audit position that the Tender 65-A rates are applicable. In one, the agency argues that although Kelly AFB is not a "political part" of San Antonio, it is surrounded by the city and is, therefore, geographically within the city. In support of this position GSA refers to an opinion of a Kelly AFB staff judge advocate so stating and a description in a Terminal Facilities Guide (AFM 75-42) which states that Kelly AFB is within the corporate limits of San Antonio.

In its other argument GSA refers to the annotations on GBL S-3592497 and 14 other GBLs covering similar shipments from Kelly AFB from March 15 through May 8, 1982, and contends that:

"\* \* \* since Riss accepted and signed these bills of lading containing the rate, route, and special quotation to apply, billed for and was paid on this basis, Riss agreed to transport the shipments under the provisions of their Tender No. 65-A."

As Riss argues and GSA recognizes, Kelly AFB is not a part of the political subdivision, San Antonio, Texas. It is, however, geographically surrounded by San Antonio and is listed in the Terminal Facilities Guide as being within San Antonio. We also note that the Standard Highway Mileage

---

<sup>2/</sup> The GBL which identified San Antonio as the shipping point, nevertheless, contained the zip code number, 78241, the number identifying Kelly AFB.

<sup>3/</sup> For example, Riss says that item 200 of Midwest Motor Freight Bureau Tariff 240E expressly provides that rates applicable to Oklahoma City, Oklahoma, also apply to Tinker AFB.

Guide, Rand McNally, 1978, in its section on Principal United States Military Installations and Government Establishments, describes Kelly AFB as "located within the corporate limits" of San Antonio. Therefore, while Kelly AFB is not technically a part of the city of San Antonio, it seems to be commonly considered as being within the city.

In similar cases we have ascertained the intentions of the parties by looking to the circumstances surrounding the making of the agreement. 51 Comp. Gen. 724 (1972). Riss would restrict the search for the intentions of the parties here to Tender 65-A based on the general principle that, absent highly unusual circumstances, extrinsic evidence may not be considered in interpreting contracts. No other evidentiary source may be considered since, in Riss' opinion, the tender clearly applies only from the technical corporate limits of San Antonio. We acknowledge the validity of the rule and the fact that it has been applied in several cases.<sup>4/</sup> However, it does not follow that we are restricted to the tender in determining the parties understanding of the origin point since the tender constituted a continuing offer, and not the entire agreement between the parties.<sup>5/</sup> This is particularly true in this case in view of the commonly recognized geographical location of Kelly AFB as being physically surrounded by San Antonio, and therefore considered at least by several sources as being within the city. Concerning Riss's allegations that it publishes other rates specifically applicable from Kelly AFB, none was cited and GSA has informally advised us that such rates could not be found among their tariff files.

The bill of lading is evidence of the transportation agreement between the government and the carrier. AFB Freight System, Inc. (East Texas Motor Freight), B-218696/ B-218697, October 30, 1985. Moreover, we have considered GBL notations identifying a tender and estimated charges, along with a carrier's voluntary acceptance, as important

---

<sup>4/</sup> See Yellow Freight System, Inc., B-195574, March 19, 1980 (mailbags from Bell, California, to Forest Park, Illinois), and Ace Doran Hauling & Rigging Co., Inc., B-190955, October 13, 1978 (submarine batteries to Kittery, Maine) and cases cited in both decisions.

<sup>5/</sup> See Starfight, Inc. - Reconsideration, B-212279, September 2, 1986, and 51 Comp. Gen., supra, concerning the legal nature of rate tenders.

evidence of the agreement between the parties. See 51 Comp. Gen., supra. While the GBL showed San Antonio as the origin of the shipment, it also showed that it was issued by the transportation officer at Kelly AFB. Thus, it appears that Riss was put on notice from the GBL references to Tender 65-A, to the mileage and to the estimated charges that Kelly AFB's transportation officer contemplated transportation of the shipment at the rates published in Tender 65-A, and that the shipment's origin was Kelly AFB. The carrier's agent raised no objection when the company received the shipment and at least 14 other similar shipments over a two-month period. Under similar circumstances, we have viewed the carrier's voluntary acceptance of a shipment as an agreement to transport at the rate shown on the GBL. See B-173923, August 11, 1972. Further, the fact that the carrier's original bill assessed charges derived from Tender 65-A indicates the carrier's understanding of the reason for the GBL's tender reference. See B-167729, November 25, 1969.

We have also held that the carrier has a duty to notify the shipper where a GBL contained on its face an obvious conflict between the service requested and the service offered. See Starflight, Inc., B-213773, July 23, 1984. Riss picked up at least 15 shipments at Kelly AFB on GBLs referenced to a tender which it contends is not applicable from that point. Thus, as in Starflight, the carrier was on notice of an obvious conflict which raised doubts concerning the shipper's understanding of the applicable rates.

Although Riss has presented some evidence supporting its contention that its offer of lower rates in Tender 65-A was not intended to apply from Kelly AFB, the record as a whole indicates that the parties agreed to be bound by the FAK mileage rates in that tender for these shipments.

Accordingly, we agree with GSA's determination that the Tender 65-A rates were applicable, and we sustain its deduction action.

*for* *Harry R. Van Cleave*  
Comptroller General  
of the United States